



**Delaware Jockey's Health & Welfare Benefit Board
Minutes of Regular Meeting Held
May 17, 2011**

The Delaware Jockey's Health & Welfare Benefit Board held a regular meeting on Tuesday, May 17, 2011, at 9:00 AM, in the second floor conference room of the Horsemen's Office, located on the grounds of Delaware Park, 777 Delaware Park Boulevard, Wilmington, Delaware 19804.

The following Board members were present:

Edward J. Stegemeier, Chairman
Bernard J. Daney, Ex-Officio
Bessie Gruwell, DTHA Board Member
William Hollick, Delaware Jockey Board Member
John Mooney, Delaware Racing Association Board Member
Heriberto Rivera, Jr., Jockey's Guild Board Member
Esteban S. Unsihuay, Delaware Jockey Board Member

The following individuals also were present:

Andrew Kerber, Esq., Deputy Attorney General, Board Counsel
John F. Wayne, DTRC, Executive Director
Robert E. Colton, President, Delaware Jockey's Association
G. Wesley Jones, Backstretch Employee Assistance Program (BEAP)
Shelley Perkins, DTRC, Paralegal I, recording minutes
Erika Rodriguez, Spanish-English Interpreter

1. WELCOME & CALL TO ORDER

At 9:05 a.m., Chairman Stegemeier called the meeting to order and welcomed those in attendance.

2. APPROVAL OF MINUTES

Upon a motion duly made (Gruwell) and seconded (Mooney) minutes of November 3, 2010 were approved as submitted with the following three corrections to the record.

4. FINANCIAL REVIEW - Presented by Robert Colton, Delaware Jockey's Association

- C. Counseling Projected:** Chairman Stegemeier reminded Mr. Colton that counseling is budgeted at a maximum of ~~\$3,000~~ \$4,000 per year and so projected at \$5,000 is not acceptable.

5. PROPOSED RULE CHANGE

- A. Eligibility Requirements for Retired Jockey Status: Proposed by Mr. Hollick**
- Mr. Kerber – timeline – publish December 1 in regulations (with DTRC rule change) and along with DTRC Wilcox and Fetzer at DDA January 11 - scheduling conflicts for scheduling in Dover with DJH&WBB January 11 – so may get pushed to February meeting on February 15 and if not February ~~than~~ then March – Darci's coverage ~~than~~ then would be in ten days after final rule change is published at the earliest of March 15, 2011.

3. NEW BUSINESS

A. Monthly Invoices - BEAP – G. Wesley Jones

1. **Validating Monthly Invoices:**

DTRC Executive Director, Mr. John F. Wayne, voiced his concern about being asked to approve monthly invoices for counseling services rendered by BEAP because he cannot confirm individuals reportedly counseled.

- Mr. Wayne cautioned the board that they are held accountable to the public and to the state for funds
- Mr. Wayne stated that it's a matter of holding the invoice up to the same level of scrutiny as other invoices approved by him on a day-to-day basis – not a matter of questioning the honesty with which the invoice is submitted.
- DTHA Representative, Ms. Bessie Gruwell agreed, asking then if Mr. Wayne doesn't see it, who would ever be able to see the invoice to verify it?
- DRA Representative, Mr. John Mooney remarked that if seeking a legal opinion from legal counsel the matter should be held over until Mr. Kerber is present. (*Counsel Andrew Kerber e.t.a. 9:30 a.m.*)

2. **HIPPA:**

Ex-Officio member, Mr. Bernard Daney consulted with an outside attorney and read aloud from an e-mail, as follows.

The individual providing the services to the jockeys is, of course, obligated to maintain client confidentiality, both ethically and under HIPAA. However, he also has a clear "duty to warn" if he has reason to believe that an individual poses a threat to others. This, I believe, would obligate him to notify the Commission if there was an issue with a specific jockey. HIPAA recognizes this duty and permits such disclosures.

The problem arises, of course, with the subjectivity of the determination as to when the problem is significant enough to warrant notification. Unfortunately, this is the type of thing that gets sorted out if there is an incident and litigation ensues.

It would probably be useful to discuss the individual counselor's views on when the duty to warn kicks in order to help assess the Commission's exposure. In addition, this issue should be addressed in the contract that the counselor has signed via indemnification provisions, etc. I think that the AG assigned to the Commission (if there is one) can also advise as to the relative liability of the counselor, the Commission, the Jockey Board and the Track in the event that there is a failure to warn and damage results.

- BEAP Counselor, Mr. G. Wesley Jones replied that all those who enter his office must sign a statement if they come up positive in a drug test then Wes notifies the stewards as positive and that is the notification & warning – that's only with those referred.
- Secondly, if someone enters into Mr. Jones' office on their own they do not sign that waiver, however, in that instance Mr. Jones feels he does have a duty to warn – and he would notify DTRC Investigator, Mr. Fran Swift via written notice on a conditional license – if not a conditional license then Mr. Jones would notify stewards and trainer.
 - Furthermore, Mr. Jones confirmed that Jockeys is all he does for us.

3. **Validating / HIPPA:**

Mr. Wayne stated that he is asking for legal opinion and clarification on signing approval of invoice based on 3 descriptive qualifiers: 1) date of service, 2) type of service, and 3) client number.

4. **Resolution – Verbatim counsel decree – made by DAG Andrew Kerber:**

"This board and John Wayne are exempted from any responsibility that has been agreed to and deemed acceptable from Department of Agriculture."

Andrew Kerber will take another look at his notes and advise the board of the specific person at DDA he spoke with and with whom responsibility lays. (*Mr. Kerber advised J. Wayne via telephone following the meeting that he had spoken with Sandra Ogden at DDA who would be able to call an audit.*)

3. **NEW BUSINESS - Continued**

B. **Contract Renewal – BEAP – G. Wesley Jones**

Upon a motion duly made (Hollick) and seconded (Mooney) the board unanimously approved contract renewal for services, June 2011 through June 2012.

C. **New Board Member – Esteban S. Unsihuay**

Mr. Esteban S. Unsihuay is the new board member representative for the Delaware jockey colony and replaces Mr. Clinton Potts.

D. **Racetrack Chaplaincy of America**

Executive Director Wayne asked the board to consider making a good will offering to the Race Track Chaplaincy of America (RCTA). Chaplin Huffington who represents the RTCA at Delaware Park conducts daily visits to the Jockey's Room and leads the riders in devotions. The board tabled this matter for a later date.

4. **PROPOSED RULE CHANGES**

A. **Retired Member Eligibility**

The Delaware Jockey's Health and Welfare Benefit Board, in accordance with 3 Del.C. §10103(c) has proposed changes to its rules and regulations. This rule change is proposed to amend retired member eligibility. The proposed rule change amends Rule 2.1.2.2 by eliminating the minimum number of career mounts, as follows:

2.1.2 A Retired Delaware Jockey is eligible for health insurance coverage under the Fund if:

2.1.2.1 The Jockey was receiving health insurance coverage as a retired Jockey provided by the Delaware Thoroughbred Racing Commission's health insurance plan with the Jockey's Guild on January 1, 2006; or

2.1.2.2 The Jockey rode a minimum of 100 mounts at Delaware Park during the regular Delaware Park season for at least seven years. and had at least 5,000 career mounts at any track.

B. **Permanently Disabled Members**

The Delaware Jockey's Health & Welfare Benefit Board, in accordance with 3 Del.C. §10103(c) has proposed changes to its rules and regulations. This rule change is proposed to amend eligibility defined for permanently disabled members. The proposed rule change amends Rule 2.1.3.1 by removing the existing language and replacing it with new language, as follows:

2.1.3 A disabled Delaware Jockey's spouse and dependents qualify for health benefits if the disabled Jockey meets all of the following requirements:

2.1.3.1 ~~Qualification as an active Delaware jockey as defined by 2.1.1 for at least three years preceding determination of permanent disability. The Jockey was an active participant in the Delaware Jockey's Health and Welfare Benefit Board program at the time of the on-track accident that resulted in total and permanent disability; and~~

2.1.3.2 Be deemed permanently disabled by Social Security and qualify for Medicare as a result of an injury sustained during the regular Delaware Park season on the premises of Delaware Park, and arising in the course of his/her participation as a licensed Jockey.

5. **HELMETS & VESTS**

Chairman Stegemeier advised Mr. Colton that the issue lies at the national level, with either the ARCI and/or the Jockey's Guild.

6. **ADJOURN**

At 9:59 a.m., upon a motion duly made (Mooney) and seconded (Gruwell) the meeting was adjourned. The Board will meet next at 9:00 a.m., on June 21, 2011.